IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1371 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JYOTI LAND CORPORATION

Versus

KAILASHNAGAR FLATS CO.OP.HOU. SOC. LTD.

Appearance:

MS VASUBEN P SHAH for Petitioner

MR CJ VIN for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2001

ORAL JUDGEMENT

1. The revisioner is aggrieved by an order passed by the learned 6th Joint Civil Judge (S.D.), Surat, on the 12th January, 1989, below Ex.29 in Special Civil Suit No.242 of 1983.

2. The facts, in a narrow compass, are that the present revisioner had entered into a contract with the present opponent, which is a co-operative society for construction of houses. On completion of the work, according to the revisioner, it was entitled to a

stipulated amount which the opponent failed to pay. As a result of which, the revisioner preferred Special Civil Suit No.183 of 1983 against the present opponent. The case of the present opponent, on the other hand, is that the revisioner had not performed its part of the contract and, therefore, the present opponent preferred Special Civil Suit No.242 of 1983 against the present revisioner.

3. In Special Civil Suit No.183 of 1983 preferred by the present revisioner, present opponent raised certain contentions. By then, the present revisioner had already filed its written statement in Special Civil Suit No.242 of 1983 putting forward its case. Because of the contentions raised in the written statement by present opponent in Special Civil Suit No.183 of 1983, the present opponent preferred an application (Ex.29) in Special Civil Suit No.242 of 1983, seeking amendment of written statement and sought that, in event Special Civil Suit No.183 of 1983 is dismissed because of the technical defects, the defendant (present revisioner) prefers a counter claim of Rs.2,50,000/- or in the alternative, claims a set off. The learned Civil Judge, after considering the rival side contentions, dismissed the application. The learned Judge observed that the defendant (present revisioner) has made an attempt by preferring this application to introduce a new case as the case put forward in form of counter claim has already been put forward by preferring Special Civil Suit No.183 of 1983.

4. Heard Ms. Brahmbhatt for the revisioner and Mr. Vin for the opponent.

5. Ms. Brahmbhatt's main contention is that the revisioner is not coming forward with a new case. This case was already advanced by the revisioner in the written statement filed earlier and also in the Civil Suit No.183 of 1983. No new case is sought to be introduced by the revisioner, as has been observed by the Trial Court and, therefore, the order may be quashed and set aside.

6. On the other hand, Mr. Vin submitted that the revisioner comes with a counter claim only after certain contentions are raised in the written statement in Special Civil Suit No.183 of 1983. Instead of amending the plaint, attempt is made to amend the written statement for one more round of battle for the same cause of action. Mr. Vin, therefore, submitted that there is no jurisdictional error committed by the Court below and this Court may not entertain this revision application.

7. Having regard to the facts of the case, it is amply clear that the revisioner was aware about its right and cause of action. For that cause of action, it preferred a suit, namely, Special Civil Suit No.183 of 1983. The defendants in that suit (present opponent) instead of preferring counter claim, preferred Special Civil Suit No.242 of 1983. At that stage also, the revisioner files a written statement without setting forward the counter claim. The amendment is sought by putting forward the counter claim only with a view to fill up the lacunas and overcome the defects in Special Civil Suit No.183 of 1983, which are likely to be fatal to that case. The revisioner cannot exploit two remedies at a time for the same cause of action. The revisioner was aware of his claim against the opponent when he filed the written statement. He has raised a contention in this regard in the written statement. He chose not to prefer counter claim and rightly so, when he had already preferred Special Civil Suit No.197 of 1983. Thereafter, having realised the defects in that suit on basis of contention raised in the written statement in Special Civil Suit lNo.183 of 1983, as an after thought, amendment to written statement in this suit lis sought. Having chosen a remedy by preferring Special Civil Suit No.183 of 1983 for a particular cause of action, it now cannot be permitted to pursue the same cause of action by filing a counter claim in a suit preferred by the defendant. A counter claim has the same effect as a cross-suit as per Order VIII, Rule 6-A(2) of the Code of Civil Procedure. The revisioner has already preferred such suit bearing No.183 of 1983. If amendment sought for is allowed, it would amount to permitting the revisioner to prefer two suits for same cause of action.

8. In view of above discussion, the Courts below rightly rejected the amendment. In the opinion of this Court, no jurisdictional error is committed by the Trial Court and the revision, therefore, does not merit allowance. The revision is, therefore, dismissed. Interim relief granted earlier stands vacated. No costs.

[A.L. DAVE, J.]

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